

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)
DEVICES AND CONTROLLING WORKS ON)
MULDOON CREEK AND TRIBUTARIES, WATER)
DISTRICT 37-O)
_____)

ORDER

During 2003, the Idaho Department of Water Resources ("Department") continues to receive complaints about out-of-priority diversions or excess diversions and the lack of measuring devices and headgates on diversions in Water District 37-O, Muldoon Creek and tributaries ("Water District"). Department staff inspected diversions within the Water District in 2002 and determined that adequate measuring devices and control works do not exist on many, if not all, diversions within the Water District.

Section 42-701, Idaho Code, provides in pertinent part as follows:

**42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING
WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -
PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN - MEASURING AND
REPORTING OF DIVERSIONS - PENALTY FOR FAILURE TO COMPLY -
ENFORCEMENT PROCEDURES - REPORT FILING FEE.**

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

....

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices..., upon receiving ten (10) days' notice from the director of the department of water resources within

which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

....

ORDER

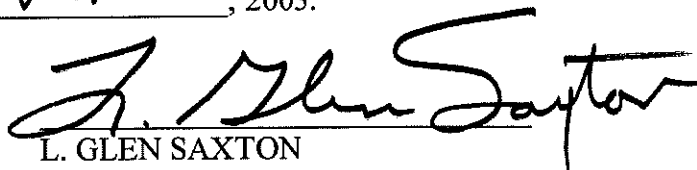
IT IS HEREBY ORDERED AS FOLLOWS:

1. All users diverting water from Muldoon Creek and tributaries shall submit plans for measuring devices and lockable controlling works to the Department for review and approval on or before January 31, 2004. If measuring devices and/or controlling works are already in place, the water user shall submit a written description to the Department on or before January 31, 2004.

2. On or before June 1, 2004, all water users within the Water District shall install and maintain measuring devices and lockable controlling works of a type acceptable to the Department.

3. The watermaster shall shut off and refuse to deliver water to any diversion within the Water District that does not have an adequate measuring device and/or lockable controlling works at all times after June 1, 2004.

Dated this 10th day of October, 2003.



L. GLEN SAXTON
Administrator
Water Management Division